

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  James C. Bastian, Jr. – Bar No. 175415 Melissa Davis Lowe – Bar No. 245521 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: JBastian@shulmanbastian.com MLowe@shulmanbastian.com  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Chapter 7 Trustee	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION</b>	
In re:  BANNER MATTRESS, INC., fka Banner Bedding, Inc.   <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 6:19-bk-13381-SC CHAPTER: 7  <div style="text-align: center; padding: 20px;"> <b>NOTICE OF SALE OF ESTATE PROPERTY</b> </div>

<b>Sale Date:</b> 12/14/2021	<b>Time:</b> 11:00 am
<b>Location:</b> SHULMAN BASTIAN FRIEDMAN & BUI LLP, 100 Spectrum Center Dr, Suite 600, Irvine, California 92618	

**Type of Sale:** ☒ Public ☐ Private **Last date to file objections:** 11/30/2021

**Description of property to be sold:** All remaining Estate property consisting of known and unknown assets or claims, which have not been previously sold, assigned, or transferred (collectively, "Remnant Assets"), subject to certain exclusions (see Ex. A hereto).

**Terms and conditions of sale:** Pursuant to the Purchase Agreement by and between Oak Point Partners, LLC ("Oak Point") and the Trustee (see Ex. A hereto), Oak Point shall pay \$7,500 for the Remnant Assets, payment due within 3 business days after the Court enters an order approving the sale. The only contingency to which the sale is subject is the Court's approval. The Estate will not have to pay commissions, fees, or other costs of sale, except for costs of filing and serving the Sale Motion and related documents.

**Proposed sale price:** \$ 7,500.00

**Overbid procedure (if any):** See Ex. B Bidding Procedures attached hereto.

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

December 14, 2021, at 11:00 a.m.

United States Bankruptcy Court  
Central District of California  
3420 Twelfth Street  
Riverside, CA 92501

**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

James C. Bastian, Jr. – Bar No. 175415  
Melissa Davis Lowe – Bar No. 245521  
SHULMAN BASTIAN FRIEDMAN & BUI LLP  
100 Spectrum Center Drive, Suite 600  
Irvine, California 92618  
Telephone: (949) 340-3400  
Facsimile: (949) 340-3000  
Email: JBastian@shulmanbastian.com  
MLowe@shulmanbastian.com

Date: 11/17/2021

# EXHIBIT "A"

(Asset Purchase Agreement)

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of November \_\_, 2021, is by and between **LYNDA T. BUI, not individually, but solely as chapter 7 trustee ("Trustee" or "Seller") of BANNER MATTRESS, INC. FKA BANNER BEDDING, INC. ("Debtor") BANKRUPTCY ESTATE ("Estate")**, and **OAK POINT PARTNERS, LLC ("Purchaser")**.

### WITNESSETH:

**WHEREAS**, on or about April 22, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California ("Court"), assigned Case No. 19-13381; and

**WHEREAS**, on or about October 24, 2019, the Trustee was appointed as chapter 11 trustee of the Debtor's Estate; and

**WHEREAS**, on or about November 6, 2019, the Debtor's bankruptcy case was converted to a case under chapter 7 of the Bankruptcy Code, and on or about November 7, 2019, the Trustee was appointed as chapter 7 trustee of the Debtor's Estate; and

**WHEREAS**, at the time of the execution of this Agreement and continuing into the future, there may be property of the Estate remaining, consisting of known or unknown assets or claims which have not been previously sold, assigned, transferred or administered in the Debtor's Estate (collectively, "Remnant Assets"); and

**WHEREAS**, Remnant Assets specifically **exclude**: (a) cash held at the time of this Agreement in the Seller's fiduciary bank account for the Debtor's case; provided, however, that any cash that exists in such bank account one year from the date of the closing of the Debtor's case shall be Remnant Assets; (b) any returned or undeliverable creditor claim distribution checks pursuant to 11 U.S.C. § 347; (c) any and all Goods<sup>1</sup> (e.g., office furniture) of the Debtor; and (d) the Purchase Price (as hereinafter defined) to be delivered pursuant hereto; and

**WHEREAS**, subject to Court approval, Seller has the power and authority to sell and assign all right, title and interest in and to the Remnant Assets to Purchaser, including, but not limited to the proceeds thereof.

**NOW THEREFORE**, in consideration of the promises and mutual undertakings herein contained, Seller and Purchaser agree as follows:

1. **Purchase Price.** The Purchase Price shall be good funds in the amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) payable within 3 business days of receipt by Purchaser of this executed Agreement and the entry of a non-appealable Order of the Court approving this Agreement.
2. **Assignment of Remnant Assets.** Seller hereby irrevocably and unconditionally sells, assigns, transfers and conveys to Purchaser all of Seller's right, title and interest under, in and to the Remnant Assets, as well as any and all claims and rights related to the Remnant Assets, including, without limitation, all cash, securities, instruments and other property that may be paid or issued in conjunction with the Remnant Assets and all amounts, interest, and costs due under the Remnant Assets.

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<sup>1</sup> The term "Goods" as used herein shall have the meaning ascribed to it under § 9-102(a)(44) of the Uniform Commercial Code.

3. **Authority to Sell.** Subject to Court approval, the sale of the Remnant Assets by Seller is made pursuant to the authority vested in Seller.

4. **Payments Received on Remnant Assets.** Seller further agrees that any payments received by Seller on account of any Remnant Assets shall constitute property of Purchaser to which Purchaser has an absolute right, and that Seller will promptly deliver such payment to Purchaser at Purchaser's address set forth below. Seller agrees to use reasonable efforts to forward to Purchaser notices received with respect to any Remnant Assets.

5. **Seller's Representations and Warranties.** In consideration of Purchaser's agreements herein and to induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that Seller has full lawful right, title, power and authority to enter into this Agreement and to convey Seller's interest to Purchaser in the Remnant Assets as is set forth in this Agreement.

**EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER SELLS, ASSIGNS, AND TRANSFERS THE REMNANT ASSETS TO PURCHASER "AS IS, WHERE IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR IMPOSED BY LAW.**

6. **Free and Clear Sale.** The sale of Remnant Assets shall be free and clear of any liens, claims, or encumbrances pursuant to 11 U.S.C. § 363(f).

7. **No Assumption of Liabilities.** Notwithstanding any other provision of this Agreement, the parties agree that Purchaser is acquiring only the Remnant Assets and rights and interests related thereto, and that Purchaser is not acquiring or assuming, nor shall it be deemed to have acquired or assumed, any liabilities or obligations, including lien obligations, of Seller or its affiliates of any kind or nature, whatsoever, whether known or unknown, existent or future, arising out of, or in connection with, the Remnant Assets, except as may otherwise expressly be provided herein.

8. **Documents of Assignment.** Prior to the closing of the bankruptcy case, Seller shall execute and deliver to Purchaser such documents reasonably requested by Purchaser to evidence and effectuate the transfer contemplated by this Agreement in a form reasonably acceptable to the parties hereto. However, Purchaser shall reimburse Seller for its reasonable costs associated with such compliance.

9. **Limited Power of Attorney.** Solely with respect to the Remnant Assets, and to the extent permitted by law, Seller hereby irrevocably appoints Purchaser as its true and lawful attorney and authorizes Purchaser to act in Seller's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Remnant Assets herein assigned. Seller grants unto Purchaser full authority to do all things necessary to enforce the transfer of the Remnant Assets to Purchaser and its rights thereunder pursuant to this Agreement.

10. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between Seller and Purchaser and supersedes any and all prior agreements and understandings with respect to the subject matter hereof. This Agreement may not be amended or in any manner modified unless such amendment or modification is in writing and signed by both parties.

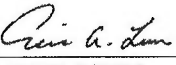
11. **Benefits and Binding Effect.** All provisions contained in this Agreement or any document referred to herein or relating hereto shall inure to the benefit of and shall be binding upon the respective successors and assigns of Seller and Purchaser.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to choice of law principles of the State of California.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument, and copies or facsimiles of execution signatures shall be equivalent to original signatures.

**THIS AGREEMENT** has been duly executed as of the day and year first above written.

**OAK POINT PARTNERS, LLC**

By:   
Name: ERIC LINN  
Its: President

Address (*for regular mail and mail forwarding*): PO Box 1033, Northbrook, IL 60065-1033  
Address (*for overnight delivery*): 5215 Old Orchard Road, Suite 1000, Skokie, IL 60077  
Tel (847) 577-1269 Fax (847) 655-2746

**BANNER MATTRESS, INC. FKA BANNER BEDDING, INC. BANKRUPTCY ESTATE**

By:   
Name: LYNDA T. BUI  
Its: Chapter 7 Trustee

Address: 3550 Vine Street, Ste. 210, Riverside, CA 92507  
Tel (949) 340-3400 Fax (949) 340-3000

# EXHIBIT "B"

## (Bidding Procedures)

### **Bidding Procedures<sup>1</sup>**

The sale of the Remnant Assets to Oak Point is subject to overbid. In the event a party other than Oak Point (each, a “Competing Bidder”) wishes to purchase the Remnant Assets, the Trustee requests that the Court approve the following overbid procedures (collectively, “Bidding Procedures”):

- a. Each Competing Bidder who wants to participate in the overbid process must notify the Trustee of their intention to do so in accordance with the Notice on or before the Response Deadline, or November 30, 2021;
- b. the first overbid by a Competing Bidder for the Remnant Assets must be at least \$1,875 more than the Purchase Price, or a total of \$9,375;
- c. each Competing Bidder must submit a Cashier’s Check to the Trustee in the amount of such Competing Bidder’s first overbid at the time such overbid is made;
- d. each subsequent overbid for the Remnant Assets must be in additional increments of \$1,000, unless otherwise agreed by the parties or directed by the Court;
- e. the Competing Bidder for the Remnant Assets must purchase the Remnant Assets under the same terms and conditions set forth in the Purchase Agreement, other than the Purchase Price; and
- f. in the event of an overbid that meets the foregoing conditions, the Trustee will schedule an auction of the Remnant Assets in advance of the hearing date and will request that the Court approve the winning bidder at the auction as the purchaser at the hearing on the Motion.

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<sup>1</sup> All capitalized terms not defined herein shall have the same meanings as ascribed to them in the *Motion of Chapter 7 Trustee for an Order Approving the Sale of Certain Assets of the Debtor’s Estate Free and Clear of all Liens, Claims, Interests and Encumbrances and Related Relief* [Dkt. No. 312].



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
100 Spectrum Center Drive, Suite 600, Irvine, CA 92618

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 11/17/2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On *(date)* 11/17/2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/17/2021  
*Date*

Lori Gauthier  
*Printed Name*

/s/ Lori Gauthier  
*Signature*

**ADDITIONAL SERVICE INFORMATION (if needed):**

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)**

- **Robert M Aronson** robert@aronsonlawgroup.com,  
info@aronsonlawgroup.com;robert@ecf.inforuptcy.com;r55297@notify.bestcase.com
- **James C Bastian** jbastian@shulmanbastian.com
- **Bernard D Bollinger** bbollinger@buchalter.com,  
IFS\_filing@buchalter.com;smartin@buchalter.com
- **Dustin P Branch** branchd@ballardspahr.com,  
carolod@ballardspahr.com;hubenb@ballardspahr.com
- **Jess R Bressi** jess.bressi@dentons.com, kimberly.sigismondo@dentons.com
- **Ronald K Brown** ron@rkbrownlaw.com
- **Lynda T. Bui (TR)** trustee.bui@shulmanbastian.com, C115@ecfcbis.com
- **Joseph E. Caceres** jec@locs.com, generalbox@locs.com
- **Abram Feuerstein** abram.s.feuerstein@usdoj.gov
- **Chantelle Fisher** cfisher@bpslaw.net
- **Everett L Green** everett.l.green@usdoj.gov
- **Mirco J Haag** mhaag@buchalter.com,  
dcyrankowski@buchalter.com;docket@buchalter.com
- **Vanessa M Haberbusch** vhaberbusch@lbinsolvency.com,  
dhaberbusch@lbinsolvency.com,ahaberbusch@lbinsolvency.com,abostic@lbinsolvency.co  
m,haberbusch.assistant@gmail.com,jborin@lbinsolvency.com,lbogard@lbinsolvency.com
- **Chad V Haes** chaes@marshackhays.com,  
chaes@ecf.courtdrive.com;cmendoza@ecf.courtdrive.com;cmendoza@marshackhays.co  
m;kfrederick@ecf.courtdrive.com
- **Rika Kido** rkido@shulmanbastian.com, avernon@shulmanbastian.com
- **Ian Landsberg** ilandsberg@sklarkirsh.com,  
lskaist@sklarkirsh.com;yalarcon@sklarkirsh.com;mmadden@sklarkirsh.com;ilandsberg  
@ecf.inforuptcy.com;kfrazier@sklarkirsh.com;mduran@sklarkirsh.com
- **Gabriel Liao** gliao.law@gmail.com
- **Crystle Jane Lindsey** crystle@wsrlaw.net,  
crystle@cjlw.com;gabby@wsrlaw.net;dairi@wsrlaw.net;virginia@wsrlaw.net
- **Melissa Davis Lowe** mlowe@shulmanbastian.com, avernon@shulmanbastian.com
- **Michael B Lubic** michael.lubic@klgates.com, jonathan.randolph@klgates.com
- **Tinho Mang** tmang@marshackhays.com,  
tmang@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@ecf.courtdrive.co  
m
- **Ernie Zachary Park** ernie.park@bewleylaw.com
- **Nanette D Sanders** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **James R Selth** jim@wsrlaw.net,  
jselth@yahoo.com;dairi@wsrlaw.net;vinnet@ecf.inforuptcy.com
- **United States Trustee (RS)** ustpregion16.rs.ecf@usdoj.gov
- **Daniel J Weintraub** dan@wsrlaw.net,  
vinnet@ecf.inforuptcy.com;gabby@wsrlaw.net;dairi@wsrlaw.net
- **J Scott Williams** jwilliams@williamsbkfirm.com, g24493@notify.cincompass.com

## **2. SERVED BY U.S. MAIL**

### ***Debtor***

#### **Banner Mattress, Inc.**

1501 E. Cooley Dr., Unit B  
Colton, CA 92324-3972

### ***U.S. Trustee***

#### **United States Trustee (RS)**

3801 University Avenue, Suite 720  
Riverside, CA 92501-3200

#### **Oak Point Partners, LLC**

Attn: Eric Linn, President  
PO Box 1033  
Northbrook, IL 60065-1033

#### **Oak Point Partners, LLC**

Attn: Janice A. Alwin, SVP and General Counsel  
5215 Old Orchard Rd., Suite 1000  
Skokie, IL 60077

### **Request for Special Notice Parties:**

WRI Jess Ranch Venture

c/o Weingarten Realty Investors

Attn: Jenny J. Hyun, Esq.

2600 Citadel Plaza Drive, Suite 125  
Houston, TX 77008

The Price REIT, Inc.

c/o Blackmar, Principe & Schmelter, APC

Attn: Chantelle M. Fisher, Esq.

600 B Street, Suite 2250  
San Diego, CA 92101

Citivist Commercial Investments/Retail Properties  
of America, Inc.

c/o Dustin P. Branch, Esq.

Ballard Spahr LLP

2029 Century Park East, Suite 800  
Los Angeles, CA 90067-2909

Cal Oaks Plaza, LLC

c/o Ian S. Landsberg, Esq.

Sklar Kirsh, LLP

1880 Century Park East, Suite 300  
Los Angeles, CA 90067

**Judge's Courtesy Copy:**

The Honorable Scott C. Clarkson  
U.S. Bankruptcy Court  
Ronald Reagan Federal Building  
411 W. Fourth Street, Suite 5130  
Santa Ana, CA 92701